

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BENJAMIN PIERCE AND DEBBIE
PIERCE,

Plaintiff(s),

V.

BJ'S WHOLESALE CLUB, INC. AND
JOHN DOES I THROUGH XX,

Defendants.

Civil Action No.

DEFENDANT BJ'S WHOLESALE CLUB, INC.'S
NOTICE OF REMOVAL

Defendant BJ's Wholesale Club, Inc. (hereinafter referred to as "BJ's" or "Defendant") files this Notice of Removal pursuant to 28 U.S.C. §1441(a) and (b) to remove this action from the Superior Court of New Jersey, Law Division, Burlington County, where it is now pending, to the United States District Court for the District of New Jersey. Defendant, in support thereof, states as follows:

1. A Civil Action has been brought against Defendant by the Plaintiffs Benjamin Pierce and Debbie Pierce (hereinafter referred to as “Plaintiffs”) and is pending in the Superior Court of New Jersey, Law Division, Burlington County, docket number BUR-L-745-22. A copy of Plaintiffs’ Complaint is attached hereto as Exhibit “A”.
2. The State Court wherein this action was originally filed is located in Burlington County, New Jersey, which is embraced within this jurisdictional district.
3. Removal from the Superior Court of New Jersey Law Division, Burlington County is proper under 28 U.S.C. §§1441(a) and (b), which authorizes the removal of any civil action

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of which the District Courts of the United States has original jurisdiction and if “none of the parties in interest properly joined and served as a defendant is a citizen of the state in which such action is brought.” (emphasis added).

4. This Court has original jurisdiction over the subject matter under 28 U.S.C. §1332 as the parties in interest properly joined and served are citizens of different states, and the matter in controversy exceeds \$75,000.00 as set forth below.
5. Specifically, in the alleged accident that is the subject of Plaintiffs’ Complaint, Plaintiff Benjamin Pierce claims that on April 8, 2021, as a result of the carelessness and negligence of the Defendant, he was caused to sustain serious and permanent injuries, has suffered great pain and suffering, for which he claims permanent disability that will in the future similarly incapacitate him, and will require future medical treatment and cause future economic losses. See Exhibit “A”, First Count, ¶8.
6. Plaintiff claims that the acts and/or omissions of Defendant BJ’s constituted willful, wanton and/or grossly negligent acts or omissions. See Exhibit “A”, First Count, ¶9.
7. Furthermore, Plaintiff Debbie Pierce is also bringing a loss of consortium claim. Specifically, she claims that as a result of the negligence and carelessness of Defendant, she has and will in the future be required to provide extraordinary services and care and has and will be denied the aid, comfort, companionship, society and consortium with Plaintiff Benjamin Pierce. See Exhibit “A”, Fifth Count, ¶3.
8. Plaintiff also demands judgment against Defendant, for damages, interest, costs of suit, and attorney’s fees. See Exhibit “A”, Wherefore Clause.
9. In order to clarify the amount of damages at issue, Defendant served Plaintiffs with a stipulation to limit damages to \$75,000, and advised that if this was not signed

immediately, Defendant would remove this matter to the Federal Court. See correspondence from counsel for Defendants to counsel for Plaintiffs, attached as Exhibit “B”.

10. Plaintiffs have failed and refused to sign and return the Stipulation to Limit Damages to \$75,000.
11. As such, based on Plaintiffs’ claims that Defendant acted in a willful, wanton and/or grossly negligent way to cause Plaintiff Debbie Pierce a loss of consortium and Benjamin Pierce permanent disability that will incapacitate him in the future, severe painful bodily injuries, great pain and suffering, past and future economic losses as well as a necessity for future medical treatment, as well as the fact that Plaintiffs have refused to sign a Stipulation limiting Damages to \$75,000, it is Defendant’s position that Plaintiffs are seeking an amount in excess of \$75,000 and this Court does not have to guess as to whether this Court’s jurisdictional threshold has been met.
12. Additionally, removal is proper as the parties are citizens of different states as Plaintiffs are citizens of New Jersey and Defendant BJ’s Wholesale Club, Inc., is a Delaware corporation with a principal place of business in Massachusetts.
13. As such, based on the serious and permanent personal injury claims, permanent disability claims, future incapacitation claims, significant medical treatment and economic damages claims that Plaintiffs claims have resulted from the negligence, carelessness, willful, wanted and gross negligence of Defendants, Plaintiff’s Debbie Pierce loss of consortium claims, and that Plaintiffs have refused to sign a Stipulation limiting damages to \$75,000, it is Defendant’s position that Plaintiffs are seeking an amount in excess of \$75,000 and

this Court does not have to guess as to whether this Court's jurisdictional threshold has been met. See Exhibits "A" - "B".

14. This removal is also timely, as this case was filed on or about April 26, 2022, and was served or otherwise received by Defendant on or about May 9, 2022. This Notice of Removal is being timely filed within 30 days of service or receipt of the Complaint by Defendant, and within one year of the filing of the Complaint, pursuant to 28 U.S. Code § 1446.
15. Thus, Removal from the Superior Court of New Jersey, Law Division, Burlington County is proper under 28 U.S.C. §1441(a) and (b).
16. This Court has original jurisdiction over the subject matter under 28 U.S.C. §1332 as the parties are citizens of different states, and the matter in controversy exceeds \$75,000 as set forth above. Based on Plaintiffs' claims for serious and permanent personal injuries, future incapacitation and permanent disability as well as significant medical treatment and other lost earnings or economic damages, loss of consortium claims, as well as the fact that Plaintiffs have refused to sign a Stipulation Limiting Damages to \$75,000, it is Defendant's position that Plaintiffs are seeking an amount in excess of \$75,000, and this Court does not have to guess as to whether Plaintiff is seeking an amount in excess of \$75,000.
17. Based on the foregoing, the requirements of 28 U.S.C. §1441(a) and (b), 1446 and 1332 have been satisfied and the within matter is properly removable.

WHEREFORE, Defendant BJ's Wholesale Club, Inc. respectfully requests that the State Action be removed from the Superior Court of New Jersey, Law Division, Burlington County to the United States District Court for the District of New Jersey.

Dated: May 17, 2022

s/ *John M. McConnell*
John M. McConnell, Esquire (028152006)
GOLDBERG SEGALLA LLP
301 Carnegie Center Drive,
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609-986-1326
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Attorneys for Defendant BJ's Wholesale
Club, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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CERTIFICATE OF SERVICE

I, John M. McConnell, hereby certify that a true and correct copy of the foregoing Notice of Removal, and supporting documents, and Jury Demand were filed with the Court and served on all counsel of record via email on this 17th day of May 2022.

Dated: May 17, 2022

s/ John M. McConnell

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NOTICE OF APPEARANCE OF
JOHN M. MCCONNELL, ESQ.

PLEASE TAKE NOTICE that the undersigned counsel hereby enters an appearance as counsel of record on behalf of Defendant BJ's Wholesale Club, Inc. in the above-entitled action.

PLEASE TAKE FURTHER NOTICE that copies of all papers served in this matter should be served upon the undersigned.

Dated: May 17, 2022

s/ John M. McConnell
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GOLDBERG SEGALLA LLP
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**JURY DEMAND ON BEHALF OF BJ'S
WHOLESALE CLUB, INC.**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 38, the Defendant BJ's Wholesale Club, Inc. hereby demands a Jury trial in this matter, on all issues triable by jury.

Dated: May 17, 2022

s/ *John M. McConnell*
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